

**BEFORE THE  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

DEPT. OF TRANSPORTATION  
DOCKETS  
C 100113 A 10 24

**In the Matter of:**

**MAWAFAG A. ABEDALLAH dba  
SFINTX EXPRESS TRANSIT,**

**Petitioner.**

**Docket No. FMCSA-2004-19841  
(Eastern Service Center)**

**ORDER GRANTING MOTION FOR EXTENSION OF TIME**

**1. Background**

On November 19, 2008, Administrative Law Judge (ALJ) Isaac Benkin issued his Initial Decision (Decision) in this matter, granting the Motion for Final Order of Claimant, the Field Administrator for the Eastern Service Center, Federal Motor Carrier Safety Administration (FMCSA), and finding Respondent, Mawafag A. Abedallah dba Sfinx Express Transit, liable for a civil penalty of \$2,000 for failing to implement an alcohol- and drug-testing program, as required by 49 CFR 382.115(a). The ALJ noted that his decision would become the final decision of FMCSA in 45 days unless Respondent submitted a petition or motion for review under 49 CFR 386.62.

On January 2, 2009, the 44<sup>th</sup> day following the ALJ's Decision, Respondent's President faxed a motion requesting a 15-day extension.<sup>1</sup> In support of its motion, he stated that he had mistakenly appealed the Decision to the U.S. District Court for the District of New Jersey, and that he had no knowledge that it was required to file its appeal with FMCSA. In addition, he cited his son's recent medical problems, causing

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<sup>1</sup> Respondent stated that the motion for extension was pursuant to 49 CFR 386.62. That is not correct. A motion to review the ALJ's Decision would be under 49 CFR 386.62, whereas a motion for extension of time is pursuant to 49 CFR 386.5(f).

Respondent's President to spend much time consulting with doctors. In support of this allegation, he submitted prescriptions from a New Jersey medical center dated November 26, 2008, and December 15, 2008, referring his son to urology. He also submitted a printout from a different medical center for his son's condition, for which surgery is recommended. As another reason for needing an extension, Respondent's President cited power supply problems with his computer, on which the hearing transcript for this case was contained. In support, he submitted a store receipt showing the purchase on January 1, 2009, of "PC POWER SUPP," which, he contended, was scheduled for installation on January 3, 2009. Counsel to Claimant indicated via e-mail to FMCSA's Adjudications Counsel on January 6, 2009, that he was not planning to file a reply to Respondent's request for extension.

## **2. Decision**

To base the request on Respondent's lack of knowledge of the appeal procedures is not persuasive. Not only has Respondent's President had ample opportunity in the two plus years that this matter has been pending at the Office of Hearings to familiarize himself with the Agency's Rules of Practice, but the ALJ, in bold print following his Decision, informed Respondent of the procedures for requesting review from the Assistant Administrator (AA). Although the family medical and computer problems would satisfy the good-cause requirement for an extension set forth at 49 CFR 386.5(f), I am mindful of the ALJ's warning that "Respondent's strategy, throughout this case, has been to delay the denouement as long as possible. He has objected to every single procedure date that I have set."<sup>2</sup> (Emphasis in original.)

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<sup>2</sup> Administrative Law Judge's Initial Decision, November 19, 2008, note 1, at 1.

Accordingly, although Respondent's request for a 15-day extension is granted, no further requests will be honored. The new date by which Respondent's petition for review must be received by Dockets is determined as follows: In accordance with 49 CFR 386.61, "[t]he decision of the administrative law judge becomes the final decision of the Assistant Administrator 45 days after it is served unless a petition or motion for review is filed under § 386.62." (Emphasis supplied.) Pursuant to 49 CFR 386.8(c)(2), a document is "not deemed filed until received by Dockets." Thus, unlike replies, evidence, notices of consent or objection, motions for final agency order, and answers to motions, all of which provide a time limit for serving, that is – mailing – pleadings or documents,<sup>3</sup> Respondent's petition for review of the ALJ's Decision must be received by Dockets by the due date.

Prior to the extension, the petition for review had been due on January 2, 2009, the 44<sup>th</sup> day following service of the ALJ's Decision. Respondent had 44 days in which to file the petition, not 45 days, because 49 CFR 386.61(a) states that the decision of the ALJ becomes the decision of the AA "45 days after it is served unless a petition or motion for review is filed...." Because the ALJ's Decision would become the decision of the AA at 12:00 a.m. on the 45<sup>th</sup> day absent a petition for review, the petition must be received by Dockets by the 44<sup>th</sup> day.

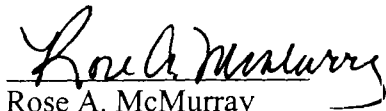
To the 44<sup>th</sup> day, however, five days are added in accordance with 49 CFR 386.8(c)(3), because the ALJ's Decision was mailed to Respondent, making the due date for filing the petition for review January 7, 2009. Absent a petition for review and absent

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<sup>3</sup> See 49 CFR 386.14(a) for replies, 49 CFR 386.16(a)(1) and (a)(2) for evidence, 49 CFR 386.16(b)(2) for notices or consent or objection, 49 CFR 386.16(b)(3) for motions for final agency order, and 49 CFR 386.34(c) for answers to motions.

an extension, the ALJ's Decision would have become the decision of the AA the following day. Because there is an extension, however, the date by which Respondent must file a petition for review is extended until January 22, 2009. To that date, however, five more days are added in accordance with 49 CFR 386.8(c)(3), because this Order is being mailed to Respondent, making January 27, 2009, the date by which the petition for review must be received by Dockets. Accordingly, unless Respondent's petition for review, which must meet the requirements set forth at 49 CFR 386.62(a), is received by Dockets by January 27, 2009, the ALJ's Decision will become the decision of the AA on January 28, 2009. No further extensions will be granted.

*It Is So Ordered.*



Rose A. McMurray  
Assistant Administrator  
Federal Motor Carrier Safety Administration

1-9-09  
Date

**CERTIFICATE OF SERVICE**

This is to certify that on this 9 day of January, 2009, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

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